

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)

ROBERTO CLAROS et al.,

Plaintiffs,

v.

SWEET HOME IMPROVEMENTS, INC.,
et al.,

Defendants

Case No: 1:16-CV-344-AJT-MSN

Hearing Date: Waived

Memorandum in Support of Motion for Attorney's Fees and Costs

A. Plaintiffs are entitled to their reasonable attorney's fees.

Rule 54(d) allows Plaintiffs to seek attorney's fees by motion under the following circumstances:

- The motion must be timely;
- The motion must specify the judgment and the statute, rule, or other grounds entitling the movant to the award; and
- The motion must state the amount sought, or provide a fair estimate of it.

See Fed. R. Civ. P. 54(d)(2)(A)–(B)(i)–(iii).¹ Plaintiffs' motion meets all of the criteria.

1. Plaintiffs' motion is timely filed.

Under Rule 54(d)(2), a party must file its attorney's-fees motion within 14 days after entry of

¹ If the court so orders, the movant must also disclose the terms of any agreement it has made with respect to the fees. Fed. R. Civ. P. 54(d)(2)(B)(iv).

judgment. Fed. R. Civ. P. 54(d)(2)(B)(i). Here, the Court entered its judgments on October 14. (ECF Nos. 60–62), making Plaintiffs’ motion due by October 28. This motion was filed prior to October 28. Thus, Plaintiffs’ motion is timely.

2. Plaintiffs are entitled to their attorney’s fees by statute, by the Federal Rules, and by the terms of the parties Settlement Agreement.

Plaintiffs are entitled to their attorney’s fees on three separate bases.

First, the federal Fair Labor Standards Act provides for a mandatory award of attorney’s fees for plaintiffs who prevail. 29 U.S.C. § 216(b); *Burnley v. Short*, 730 F.2d 136, 141 (4th Cir. 1984). Here, the Court granted summary judgment for Plaintiffs Roberto Claros, José Claros, and Hector Andrade on their FLSA claims; they are clearly prevailing parties. (*See* ECF Nos. 59–60).

Second, the Court granted Plaintiffs’ motion to enforce the court’s order to pay sanctions that it had previously imposed under Fed. R. Civ. P. 37 for failure to cooperate in discovery. (ECF Nos. 55 and 61). Under Rule 37, if a party moves for sanctions based on another party’s violating a discovery order, the movant is entitled to the attorney’s fees incurred in bringing it if he or she prevails. Fed. R. Civ. P. 37(b)(2)(C). Thus, because Plaintiffs have prevailed on this motion, they are entitled to their attorney’s fees incurred in bringing it.

Finally, the Settling Plaintiffs Lopez, Zamorano, and Herrera are entitled to their attorney’s fees incurred in connection with their motion to enforce the parties Settlement Agreement. The Agreement states that, if one party breaches the Agreement and the other party has to resort to litigation in order to enforce its terms, the non-breaching party is entitled to attorney’s fees of \$320 per hour incurred as a result. (*See* Settlement Agreement, ECF No. 38-1 at ¶3). Here, Defendants breached the Agreement, the Settling Plaintiffs moved to enforce it, and the Court granted the motion. (*See* ECF Nos. 55 and 62). Thus, the Settling Plaintiffs are entitled to their attorney’s fees incurred in enforcing the motion.

3. Plaintiffs have provided a reasonable basis for the amount sought.

Plaintiffs' motion seeks \$12,480 in attorney's fees. As shown in the attached Declaration of Nicholas Marritz, this amount is based on a good-faith estimate of the hours reasonably expended over the course of this litigation, with many time entries eliminated or reduced in the exercise of billing discretion. Thus, Plaintiffs' have provided a reasonable basis for the attorney's fees that they seek.

Sub-Conclusion

Plaintiffs' motion is timely; it provides three legal bases that cover all of the attorney's fees sought in this motion; and the motion provides a reasonable basis for the amount of fees sought. Thus, Plaintiffs respectfully request that the Court award them their reasonable attorney's fees as requested.

B. Plaintiffs are entitled to the costs they incurred in litigating this case.

Under Rule 54(d)(1), unless a federal statute, rule, or court order provides otherwise, prevailing parties in a civil action are entitled to the costs of the action. Fed. R. Civ. P. 54(d)(1). The FLSA also specifically provides that prevailing plaintiffs are entitled to their costs. 29 U.S.C. § 216(b).

As set forth in the attached Declaration of Nicholas Marritz, Plaintiffs have incurred \$2,083.20 in compensable costs in the course of this litigation, and thus Plaintiffs respectfully request that the Court award them these costs as requested.

Conclusion

Plaintiffs have prevailed in their FLSA case, and in their motions to enforce both the Court's discovery sanctions and the Settling Parties settlement agreement. Each of these calls for an award of Plaintiffs' reasonable attorney's fees and costs. Thus, Plaintiffs respectfully request that the Court grant them the following relief:

1. \$12,480 in attorney's fees;
2. \$2,083.20 in costs; and
3. Any other relief the Court thinks just and proper.

Respectfully submitted,

/s/Nicholas Cooper Marritz

October 25, 2016

Nicholas Cooper Marritz (VSB No. 89795)

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Certificate of Service

I hereby certify that on October 25, 2016, I uploaded the foregoing *Memorandum in Support of Motion for Attorney's Fees and Costs* to the Court's CM/ECF system, which will cause a Notice of Electronic Filing to be sent to Defendants' counsel of record:

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October 25, 2016